

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Daniel P. and Linda S. Lynch

(b) County of Residence of First Listed Plaintiff Mifflin
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
BMZ Law, P.C. Stephen S. Snook, Esq.
20 S. Wayne Street
Lewistown, PA 17044 (717) 242-3400

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Title 28 U.S.C. Section 1332 (Diversity)

Brief description of cause:

This is a products liability claim where Plaintiff driver was badly burned due to defective design.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE 7/13/17

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA**

DANIEL P. LYNCH and LINDA S.
LYNCH, his wife,
67 Chestnut Street
Lewistown, PA 17044
Plaintiffs

vs.

IC BUS, LLC, a wholly-owned
subsidiary of NAVISTAR, INC.
2701 Navistar Drive
Lisle, IL 60523
and

BERGSTROM INC., t/d/b/a BERGSTROM
CLIMATE SYSTEMS
PO BOX 6007
2390 Blackhawk Road
Rockford, IL 61125
Defendants

No.

TYPE OF PLEADING:
COMPLAINT

TYPE OF CASE: **CIVIL**

FILED ON BEHALF OF:
PLAINTIFFS

COUNSEL OF RECORD FOR
THIS PARTY:

STEPHEN S. SNOOK, ESQUIRE
I.D. NO. 37077
BMZ LAW, P.C.
20 S. WAYNE STREET
LEWISTOWN, PA 17044
(717) 242-3400

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(814) 695-2311

**THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA**

DANIEL P. LYNCH and LINDA S.	:	
LYNCH, his wife,	:	No.
67 Chestnut Street	:	
Lewistown, PA 17044	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
IC BUS, LLC, a wholly-owned	:	
subsidiary of NAVISTAR, INC.	:	
2701 Navistar Drive	:	
Lisle, IL 60523	:	
and	:	
	:	
BERGSTROM INC., t/d/b/a BERGSTROM	:	
CLIMATE SYSTEMS	:	
PO BOX 6007	:	
2390 Blackhawk Road	:	
Rockford, IL 61125	:	
Defendants	:	

COMPLAINT

AND NOW, come the Plaintiffs, Daniel P. Lynch and Linda S. Lynch, husband and wife, by and through their attorneys, Stephen S. Snook, Esquire and Thomas K. Hooper, Esquire, of BMZ Law, P.C., and file the following Complaint, the following of which is a statement thereof:

GENERAL AVERMENTS

1. Plaintiffs, Daniel P. Lynch and Linda S. Lynch, are married adults presently residing at 67 Chestnut Street, Lewistown, Mifflin County, Pennsylvania 17044.
2. Defendant, IC BUS, LLC, a wholly-owned subsidiary of Navistar, Inc., is an Illinois

business corporation whose home office is located at 2701 Navistar Drive, Lisle, Illinois 60523 registered to conduct and regularly conducting business in the Commonwealth of Pennsylvania.

3. Defendant, Bergstrom Inc., t/d/b/a Bergstrom Climate Systems, is an Illinois business corporation whose home office is located at 2390 Blackhawk Road, Rockford, Illinois 61125, registered to conduct and regularly conducting business in the Commonwealth of Pennsylvania.

4. At all times relevant hereto, Defendant, IC BUS, LLC, a wholly-owned subsidiary of Navistar, Inc., (hereinafter referred to as "Navistar") was in the business of designing, fabricating and manufacturing school busses and at all times material hereto had designed, fabricated, manufactured and distributed the subject 2006 Navistar-International ICS Series CE-300 school bus number 72 to place it in the stream of commerce.

5. At times material hereto, Defendant, Bergstrom Inc., t/d/b/a Bergstrom Climate Systems (hereinafter referred to as "Bergstrom") was in the business of designing, fabricating and manufacturing the bus heater system which was installed by Defendant Navistar in the aforementioned school bus, manufactured by Navistar, designated as part number 782517 Serial Number BBGO29455, which Bergstrom sold to the aforesaid Defendant, Navistar, for inclusion in bus 72 as aforesaid.

6. At all times material hereto, the owner of the aforesaid bus number 72 designed and manufactured by Defendant Navistar was J & D's INC. J & D INC was at all times material hereto under contract to provide transportation for students of the Mifflin County School District and at all times material hereto employed Plaintiff, Daniel Lynch, as a bus driver.

7. On or about September 8, 2015, at or about 4:00 p.m. as Plaintiff, Daniel P. Lynch, was driving the foresaid school bus back to the garage of his foresaid employer on U.S. Route

522, suddenly and without warning, the heater hose on the aforementioned bus heater ruptured causing the Plaintiff to be splashed with hot scalding liquid upon his face, arms, left leg, and abdomen. As a result of the foresaid rupture of the heater hose Plaintiff, Daniel Lynch, sustained severe scalding burns to his arms, left leg, and abdomen causing extensive damage to his skin, soft tissue and muscles in those areas along with psychological injuries and anxiety.

8. Plaintiff, Daniel P. Lynch, sustained serious, painful and permanent injuries as a result of the aforesaid extensive scalding burns more particularly described above.

**COUNT I – PLAINTIFF, DANIEL P. LYNCH, V. ICBUS LLC. A WHOLLY-OWNED
SUBSIDIARY OF NAVISTAR, INC.
NEGLIGENCE**

9. Plaintiffs hereby incorporate by reference all averments contained in the preceding paragraphs, as though the same were fully and severally set forth at length herein.

10. The serious injuries and damages to Plaintiff Daniel Lynch were the direct, proximate and foreseeable result of the negligence, carelessness or recklessness of Defendant, Navistar, its agents, servants and employees, acting within the scope of their employment, including the following:

- a. in negligently or improperly designing, manufacturing, fabricating, supplying, distributing or selling the aforementioned 2006 Navistar school bus identified as bus number 72 with a defective, improper and inadequately designed heater system using inadequate and defective hoses;
- b. in failing to provide a high-strength durable hose that would not be adversely affected and rupture as the hot 160 degree liquid and internal pressures would build up and vary through the many cycles of usage;
- c. in failing to design and provide a fail-safe shielding system so that any hot

coolant would not be expelled into the bus interior, including adjacent to the driver's legs and left side;

d. in failing to include a warning light that would alert the driver and any mechanics that the protective cover was not in place, and an automatic shut-off or stop to prevent the coolant from flowing through the tubes into the bus interior;

e. in failing to provide a design which would route the heater line and connections beneath the bus floorpan, so that the hot coolant lines would all be external or outside of the bus interior, so that any failure would not cause any hot coolant to be expelled inside the bus;

f. in failing to design and provide for any automatic mechanism which would detect any failure and shut off the flow of the hot coolant to the bus interior in the event of any failure;

g. in failing to design and provide any protective shields surrounding the main tubes that carried the hot liquid coolant and in failing to enclose those tubes with protective shields as a safety barrier in case of the failure of the tubes and/or their connection;

h. in failing to provide and design proper and necessary mechanisms or safeguards required to prevent the failure of the heater hose as set forth herein; and,

i. in placing the aforesaid Navistar bus into the stream of commerce with the above described defective design at construction.

j. in failing to recall and remedy the defective heater hoses for the subject 2006 through 2010 Navistar IC school busses of the Series CE as they did for the

similar 2011 through 2016 models, particularly in light of the fact they were aware of a number of similar failures of these hoses producing coolant burns **prior** to the injury which occurred to Plaintiff, Daniel P. Lynch.

11. As a result of the negligence, carelessness and recklessness of Defendant, Navistar, Plaintiff, Daniel P. Lynch, has suffered damages as set for herein.

12. Plaintiff, Daniel P. Lynch, sustained painful, severe and permanent injuries which include, but are limited to those listed above.

13. By reason of the aforesaid injuries sustained by Plaintiff, Daniel P. Lynch, he was forced to incur liability for medical treatments, medication, hospitalizations and similar miscellaneous expenses in an effort to restore himself to health, and claim is made therefor.

14. Because of the nature of his injuries, Plaintiff, Daniel P. Lynch, has been advised, and therefor avers that he may be forced to incur similar expenses in the future, and claim is made therefor.

15. As a result of the aforementioned injuries, Plaintiff, Daniel P. Lynch, has undergone, and in the future will undergo, great physical and mental suffering, great inconvenience in carrying out his daily activities, loss of life's pleasures and enjoyment, and claim is made therefor.

16. As a result of the aforementioned injuries, Plaintiff, Daniel P. Lynch, has been, and in the future will be, subject to great humiliation and embarrassment, and claim is made therefor.

17. As a result of the aforementioned injuries, Plaintiff, Daniel P. Lynch, has sustained work loss, loss of opportunity and a permanent diminution of his earning power and capacity, and claim is made therefor.

18. As a result of the aforementioned injuries, Plaintiff, Daniel P. Lynch, has sustained

uncompensated work loss, and claim is made therefor.

19. Plaintiff, Daniel P. Lynch, continues to be plagued by persistent pain and limitation and therefor avers that his injuries may be of a permanent nature, causing residual problems for the remainder of his lifetime, and claim is made therefor.

20. As a result of the aforementioned injuries, Plaintiff, Daniel P. Lynch, has sustained scars which will result in permanent cosmetic disfigurement, and claim is made therefor.

WHEREFORE, Plaintiff, Daniel Lynch, demands damages against Defendant Navistar in an amount in excess of \$75,000, plus costs of suit awarded and interest.

**COUNT II – PLAINTIFF, DANIEL P. LYNCH, V. IC BUS LLC. A WHOLLY-OWNED
SUBSIDIARY OF NAVISTAR, INC.
BREACH OF WARRANTY**

21. Plaintiffs hereby incorporate by reference all averments contained in the preceding paragraphs, as though the same were fully and severally set forth at length herein.

22. Defendant, Navistar, breached and the express and implied warranties of merchantability or fitness for a particular purpose for which the aforesaid school bus was designed, fabricated, manufactured, supplied or sold, including the following:

- a. the design of the heating system identified above was unreasonably dangerous and defective and was not adequately, properly and safely accomplished;
- b. the aforesaid bus heater components and the substandard and defective design of the bus and its heater system were not of fair, average quality of the trade in which Defendant, Navistar, dealt;
- c. the heater components and the unreasonably dangerous and defective design of the bus and heater system as set forth above was not fit for the ordinary

purpose for which it was customarily used;

d. Defendant Navistar knew or should have known of the dangers resulting from the design of the bus and heater system and that they were unreasonably dangerous and defective, and likely to cause the type of damage that occurred, particularly in light of the fact that a number of similar failures causing injury in the same manner had been reported to the Defendant. In fact, the National Highway Transportation and Safety Administration issued a recall number 16V-837 applicable to Navistar IC school busses detailing this precise failure and the dangers of injury from it;

e. Defendant, Navistar, knew or should have known of the dangerous and defective condition of the aforesaid bus design and heater system and its components, and should have warned users of its dangerousness and should have recalled and replaced this dangerous design with the design changes they made to their heater hoses on new buses manufactured after March of 2015;

f. Defendant, Navistar, impliedly warranted the aforesaid bus and its heating system and component parts as fit for the uses and purposes for which they were designed, manufactured, fabricated, sold or supplied, and that they were safe for use by Plaintiff, Daniel P. Lynch; and

g. the aforesaid school bus and its heater system and components were defective and dangerous and were not fit for the intended purpose and were in fact unreasonably dangerous and defective in design.

23. As a result of Defendant, Navistar's, breach of warranty as set forth above, Plaintiff, Daniel P. Lynch, sustained damages hereinabove described.

WHEREFORE, Plaintiff, Daniel P. Lynch, demands damages against Defendant Navistar in an amount in excess of \$75,000, plus costs of suit awarded and interest.

**COUNT III – PLAINTIFF, DANIEL P. LYNCH, V. IC BUS LLC. A WHOLLY-OWNED
SUBSIDIARY OF NAVISTAR, INC.
STRICT PRODUCTS LIABILITY UNDER RESTATEMENT 2d TORTS, SECTION 402A**

24. Plaintiffs hereby incorporate by reference all averments contained in the preceding paragraphs, as though the same were fully and severally set forth at length herein.

25. The aforesaid school bus and its heater and component parts were defective and unreasonably dangerous in design and use and caused injury to Plaintiff, Daniel Lynch. The design defects are detailed extensively and with particularity in paragraphs ten (10) and twenty-two (22) and that defective and dangerous condition existed when Defendant, Navistar, sold or supplied the bus and its heater along with its component parts to Plaintiff, Daniel Lynch, who was the ultimate consumer or user thereof, without substantial change in the condition in which they were manufactured.

26. At all times relevant hereto, Plaintiff, Daniel Lynch, was using the aforesaid school bus and heater components as they were intended by Defendant, Navistar.

27. The unreasonably dangerous and defective design and construction of the bus heater system as described in paragraphs ten (10) and twenty-two (22) were the direct and proximate cause of all of Plaintiff's damages as more fully described herein above.

WHEREFORE, Plaintiff, Daniel Lynch, demands damages against Defendant Navistar in an amount in excess of \$75,000, plus costs of suit award and interest.

COUNT IV – PLAINTIFF, DANIEL P. LYNCH, V. BERGSTROM, INC.
NEGLIGENCE

28. Plaintiffs hereby incorporate by reference all averments contained in the preceding paragraphs, as though the same were fully and severally set forth at length herein.

29. The serious injuries and damages to Plaintiff, Daniel Lynch, were the direct, proximate and foreseeable result of the negligence, carelessness or recklessness of Defendant, Bergstrom, Inc., its agents, servants and employees, acting within the scope of their employment, including the following:

- a. in negligently or improperly designing, manufacturing, fabricating, supplying, distributing or selling the aforementioned defective improperly and inadequately designed heater system identified in paragraph five (5);
- b. in failing to provide a high-strength durable heater hose that would not be adversely affected and rupture as the hot, 160 degree liquid and internal pressures would build up and vary through the many cycles of usage;
- c. in failing to design and provide a fail-safe shielding system so that any hot coolant that would not be expelled so that any hot coolant would not be expelled into the bus interior including adjacent to the driver's legs and left side;
- d. in failing to include a warning light that would alert the driver and any mechanics that the protective cover was not in place, and an automatic shut-off or stop to stop the coolant from flowing through the tubes into the bus interior;
- e. in failing to design and provide for any automatic mechanism which would detect any failure and shut off the flow of the hot coolant to the bus interior in the event of any failure;

- f. in failing to design and provide any protective shields surrounding the main tubes that carried the hot liquid coolant and in failing to enclose those tubes with protective shields as a safety barrier in case of the failure to the tubes and/or their connection;
- g. in failing to provide and design and proper and necessary mechanisms or safeguards required to prevent the failure of the heater hose as set forth herein; and,
- h. in placing the aforesaid bus heating system into the stream of commerce with the above described defective design at construction;
- i. in failing to recall and remedy the defective heater hoses for the subject bus heating system after they were aware of failures of heating hoses producing coolant burns in similar circumstances prior to the injury which occurred to the Plaintiff, Daniel P. Lynch.

30. As a result of the negligence, carelessness and recklessness of Defendant, Bergstrom, Inc., Plaintiff, Daniel P. Lynch, has suffered damages as set for herein.

WHEREFORE, Plaintiff, Daniel Lynch, demands damages against Defendant Bergstrom, Inc. in an amount in excess of \$75,000, plus costs of suit awarded and interest.

COUNT V – PLAINTIFF, DANIEL P. LYNCH, V. BERGSTROM, INC.
BREACH OF WARRANTY

31. Defendant, Navistar, breached and the express and implied warranties of merchantability or fitness for a particular purpose for which the aforesaid school bus was designed, fabricated, manufactured, supplied or sold, including the following:

- a. the design of the heating system identified above was unreasonably dangerous and defective and was not adequately, properly and safely

accomplished;

b. the aforesaid bus heater components and the substandard and defective design of the bus and its heater system were not of fair, average quality of the trade in which Defendant, Bergstrom, dealt;

c. the heater components and the unreasonably dangerous and defective design of the heater system as set forth above was not fit for the ordinary purpose for which it was customarily used;

d. Defendant Bergstrom knew or should have known of the dangers resulting from their design of the bus heater system, that it was unreasonably dangerous and defective and likely to cause the type of damage that occurred, particularly in light of the fact that a number of similar failures causing injury in the same manner had been reported to the Defendant. In fact, the National Highway Transportation and Safety Administration issued a recall number 16V-837 applicable to Navistar IC school busses detailing this precise failure and the dangers of injury from it;

e. Defendant, Bergstrom, knew or should have known of the dangerous and defective condition of the aforesaid design of the bus heater system and its components and should have warned users of its dangerousness and should have recalled and replaced this dangerous design;

f. Defendant, Bergstrom, impliedly warranted the aforesaid bus heating system and component parts as fit for the uses and purposes for which they were designed, manufactured, fabricated, sold or supplied, and that they were safe for use by Plaintiff, Daniel Lynch; and

g. the aforesaid school bus heater system and components were defective and dangerous and were not fit for the intended purpose and were in fact unreasonably dangerous and defective in design.

32. As a result of Defendant, Bergstrom's, breach of warranty as set forth above, Plaintiff, Daniel P. Lynch, sustained damages hereinabove described.

WHEREFORE, Plaintiff, Daniel Lynch, demands damages against Defendant Bergstrom in an amount in excess of \$75,000, plus costs of suit award.

COUNT VI – PLAINTIFF, DANIEL LYNCH, V. BERGSTROM, INC.
STRICT PRODUCTS LIABILITY UNDER RESTATEMENT 2d TORTS, SECTION 402A

33. Plaintiffs hereby incorporate by reference all averments contained in the preceding paragraphs, as though the same were fully and severally set forth at length herein.

34. The aforesaid school bus heater system and component parts were defective and unreasonably dangerous in design and use, and caused injury to Plaintiff, Daniel P. Lynch. The design defects are detailed extensively in paragraphs twenty-nine (29) and thirty-one (31) and that defective and dangerous condition existed when Defendant, Bergstrom, sold or supplied the bus and its heater along with its component parts to Plaintiff, Daniel P. Lynch, who was the ultimate consumer or user thereof without substantial change in the condition in which they were manufactured.

35. At all times relevant hereto, Plaintiff, Daniel Lynch, was using the aforesaid school bus and heater components as they were intended by Defendant, Bergstrom.

36. The unreasonably dangerous and defective design and construction of the bus heater system as described in paragraphs twenty-nine (29) and thirty-one (31) were the direct and

proximate cause of all of Plaintiff's damages as more fully described herein above.

WHEREFORE, Plaintiff, Daniel P. Lynch, demands damages against Defendant Bergstrom in an amount in excess of \$75,000, plus costs of suit award and interest.

**COUNT VII – PLAINTIFF, LINDA S. LYNCH, V. IC BUS LLC. A WHOLLY-OWNED
SUBSIDIARY OF NAVISTAR, INC.
LOSS OF CONSORTIUM**

37. Plaintiffs hereby incorporate by reference all averments contained in the preceding paragraphs, as though the same were fully and severally set forth at length herein.

38. As a result of the aforementioned injuries sustained by her husband, Plaintiff, Daniel P. Lynch, Linda S. Lynch, has been, and may in the future be, deprived of the care, companionship, consortium and society of her husband, all of which will be to her great detriment, and claim is made therefor.

WHEREFORE, Plaintiff, Linda S. Lynch, demands damages against Defendant, Navistar, Inc. in an amount in excess of \$75,000, plus costs of suit awarded and interest.

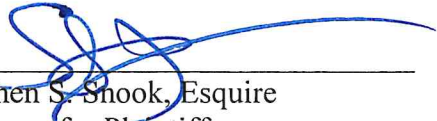
**COUNT VIII – PLAINTIFF, LINDA S. LYNCH, V. BERGSTROM, INC.
LOSS OF CONSORTIUM**


39. Plaintiffs hereby incorporate by reference all averments contained in the preceding paragraphs, as though the same were fully and severally set forth at length herein.

40. As a result of the aforementioned injuries sustained by her husband, Plaintiff, Daniel P. Lynch, Linda S. Lynch, has been, and may in the future be, deprived of the care, companionship, consortium and society of her husband, all of which will be to her great detriment, and claim is made therefor.

WHEREFORE, Plaintiff, Linda S. Lynch, demands damages against Defendant, Bergstrom, Inc. in an amount in excess of \$75,000, plus costs of suit awarded and interest.

BMZ LAW, P.C.

By: 
Stephen S. Shook, Esquire
Attorney for Plaintiffs
20 S. Wayne Street
Lewistown, PA 17044
(717) 242-3400
Supreme Court I.D. 37077

By: 
Thomas K. Hooper, Esquire
Attorney for Plaintiffs
1316 Third Avenue
Duncansville, PA 16635
(814) 695-2311
Supreme Court I.D. 72781

DATED:

7/11/17

VERIFICATION

We hereby affirm that the following facts are true and correct:

We are the Plaintiffs in the foregoing action; the attached Complaint is based upon information which has been furnished to counsel and information which has been gathered by counsel in the preparation of the prosecution of this lawsuit. The language of the Complaint is that of counsel and not of us. We have read the Complaint and to the extent that the same is based upon information which we have given to counsel, it is true and correct to the best of our knowledge, information and belief. To the extent that the content of the Complaint is that of counsel, we have relied upon counsel in making this verification. We hereby acknowledge that the facts set forth in the Complaint are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.


Daniel P. Lynch


Linda S. Lynch

DATED: